1942

File No. O. Railways/42

Legal **DEPARTMENT**
'A' **BRANCH**

Subject:—

Opinions under the Indian Railways Act; 1890.

P. 1

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Std. Sectt. Slip 24 B e.

295--A

Submitted.

2. It appears that the arch culvert No.336 at mile 141-100 East of the B.B. & C.I. Rly shown in the sketch at p. 15 ante between Vadodra and Navsari was breached during the floods in July 1911 but in order that communications may be restored immediately it was temporarily filled up with rubble. The Rly. authorities now propose to close up the said culvert on the ground that it merely provides for the passage of an over flow from the Amai creek which in turn flows through culvert No. 337 and to widen the latter by making a span two to As the residents of the adjoining villages objected to this arrangement the Rly authorities were naturally requested to rebuild the culvert and maintain the status quo. The Rly. authorities are apparently not willing to do this. The question for consideration of the A.G.A. is whether under the circumstances the B.B. & C.I. Rly. can be compelled to rebuild Culvert No. 336 under section 11(1, (b of the Indian Railway Act, 1890.

3. Section 11(1, (b of the Indian Railways Act, 1890, provides that a railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely all necessary arch es, tunnels, culverts, drains, water-courses or other passages, over or under or by the sides of the railway, of such dimensions as will, in the opinion of the Provl. Govt., be sufficient at all times to convey water as freely from or to the lands lying

near

or affected by the railways as before the making of the railway, or as nearly as may be. Under sub-section (4) the Provl. Govt, has power to appoint a time for the commencement of any word to be executed u nder sub-section (1) and to execute the work itself if the railway fails to to execute it and recover the cost so incurred. The are culvert No. 386 at mile 144-4.0 feet of the B.B.& C.I. Rly. between Vadchha and Navsari was, it appears, first constructed by the railway as an accommodations w ork under section 11(1) (b) It is true that the cu--lvert was damaged due to unprecedented floods in 1941. But it is none the less an absolute and permanent obligation on the railway administration to re-construct it and maintain it in as good ax condition as before so as to allow free passage to water at all times (Cf Dixon vs. Great Western Rly. Coy 1 Q. B. 300) As both the Collector and the Commissioner, N. D. concurring with the opinion of the Supdt. Engineer, Northern Circle consider that the closure of the nalla under the culvert would result in submerging the lands adjacent to the railway lines in the monsoon, it would be open to the Govt. to ask the railway authorities to rebuild the cul-vert. Govt. can therefore compel the railway authorities under section 11(1) (b) to restore the status quo and if it refuses to do so, it can be take action under sub-section (4) of that section.

sd/- P.S.Nadkarni.
24/ 3

A.S. I agree . Reply may be papers seen & returned.

I agree with the view taken 2. perhaps the further reply as in para 2 of Mr. Nadkarni's note may be sent to the P.W.D.

sd/-
5/4

Reply as suggested. Rla.

sd/-
11/4

U. R. to P. W. D. No. 3272, dated 16/4.4/42.